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5 GIUSEPPE PAMPENA, et al.,
6 Plaintiffs,
7 v.
8 ELON MUSK,
9 Defendant.

10 Case No. [22-cv-05937-CRB](#)
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**ORDER DENYING MOTION FOR
JUDGMENT ON THE PLEADINGS
AND MOTION TO LIFT STAY**

13 In December 2023, this Court ruled that Plaintiffs plausibly allege a securities
14 violation as to three statements made by Defendant Elon Musk (“Musk”) after he entered
15 into a deal to acquire Twitter, Inc. (“Twitter”). MTD Order (dkt. 48). Musk now moves
16 for judgment on the pleadings, largely making the exact same arguments that he made at
17 the motion to dismiss stage and which this Court explicitly considered and rejected.

18 Just as Musk was allegedly bound by his waiver of due diligence after entering into
19 the Merger Agreement, Musk is bound by this Court’s decision that Plaintiffs’ case can
20 move past the pleadings stage. The Court DENIES Musk’s motion, and in turn, DENIES
21 Plaintiffs’ motion to lift the discovery stay as moot.

22 **I. BACKGROUND**

23 **A. Relevant Factual Background¹**

24 On April 25, 2022, Twitter entered into a Merger Agreement to be acquired by an
25 entity wholly-owned by Musk. See FAC (dkt. 31) ¶ 85. Musk’s offer to acquire Twitter
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¹ The Court provides an overview of the facts directly relevant to the motion at issue. A
28 complete background of the case can be found in the Court’s motion to dismiss order. See
MTD Order at 2–11.

1 was not conditioned on financing, nor subject to business due diligence; he waived those
2 conditions in an amended offer a few days prior. Id. ¶ 82. Musk intended to finance the
3 acquisition, in large part, with his Tesla shares. But in the days after the announcement of
4 the deal, Tesla's stock declined by about \$1,000. Id. ¶¶ 92–93, 134.

5 As the price of Tesla declined, Musk tweeted about the deal. On May 13, 2022, he
6 tweeted that the Twitter deal was “temporarily on hold pending details supporting
7 calculation that spam/fake accounts do indeed represent less than 5% of users.” Id. ¶ 111.
8 On May 16, 2022, he stated that fake and spam accounts make up at least 20% of Twitter’s
9 users. Id. ¶ 120. On May 17, 2022, Musk tweeted that the actual number of fake accounts
10 at Twitter “could be *much* higher” than 20%, and that the deal could not go forward
11 until the Twitter CEO showed proof that “fake/spam accounts” accounted for less than 5%
12 of Twitter accounts. Id. ¶ 125.

13 B. Procedural History

14 Plaintiffs sued Musk, on behalf of all persons and entities who sold Twitter stock
15 from May 13, 2022 to October 4, 2022, alleging that he violated Section 10(b) of the
16 Securities Exchange Act of 1934, and Rule 10b-5 promulgated thereunder, by making
17 misstatements to artificially depress the price of Twitter stock and to pressure Twitter to
18 lower the price Musk would have to pay to acquire it. See FAC. Musk moved to dismiss
19 Plaintiffs’ entire suit. See MTD (dkt. 34).

20 In December 2023, this Court granted Musk’s motion to dismiss in part and denied
21 it in part. See Order. The Court held that “Plaintiffs plausibly allege their Section 10(b)
22 claim as to the May 13 tweet that the deal was ‘temporarily on hold,’ the May 16 statement
23 that fake and spam accounts make up at least 20% of Twitter’s users, and the May 17
24 tweet.” Id. at 1. The Court dismissed Plaintiffs’ claims to the extent they relied on other
25 alleged misstatements. Id.

26 On March 26, 2024, Musk filed the present motion for judgment on the pleadings.
27 See Mot. (dkt. 59). That motion reinstated the PSLRA discovery stay, which Plaintiffs
28 moved to lift on April 5, 2025. See Mot. to Lift Stay (dkt. 61).

II. LEGAL STANDARD

A motion for judgment on the pleadings under Rule 12(c) of the Federal Rules of Civil Procedure is proper “when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law.” Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d 1542, 1550 (9th Cir. 1990) (citation omitted). “The legal standards governing Rules 12(c) and 12(b)(6) are ‘functionally identical,’ as both permit challenges directed at the legal sufficiency of the parties’ allegations.” See Jackson v. Fischer, 2015 WL 1143582, at 8–9 (N.D. Cal. Mar. 13, 2015) (citing Dworkin v. Hustler Magazine, Inc., 867 F.2d 1188, 1192 (9th Cir. 1989), and Chavez v. United States, 683 F.3d 1102, 1108 (9th Cir. 2012)). A court “must presume all factual allegations of the complaint to be true and draw all reasonable inferences in favor of the nonmoving party.” Usher v. City of L.A., 828 F.2d 556, 561 (9th Cir. 1987).

Plaintiffs alleging securities fraud under Section 10(b) must plead the following elements: (1) a material misrepresentation or omission; (2) scienter; (3) a connection with the purchase or sale of a security; (4) reliance on the misrepresentation; (5) economic loss; and (6) loss causation (a causal connection between the material misrepresentation and the economic loss). See Dura Pharm., Inc. v. Broudo, 544 U.S. 336, 341–42 (2005); Loos v. Immersion Corp., 762 F.3d 880, 886–87 (9th Cir. 2014).

III. DISCUSSION

Musk argues that he is entitled to judgment on the pleadings because his statements were not materially misleading to a reasonable investor in light of countervailing, contemporaneous statements—specifically, provisions in the Merger Agreement. He also argues that Plaintiffs have not sufficiently alleged loss causation for any of the statements at issue.

But despite Musk’s claim to the contrary, the Court explicitly considered and rejected these arguments in its motion to dismiss order. The Court therefore denies his motion based on the law of the case doctrine. As a result, the PSLRA stay is lifted, and

1 Plaintiffs' motion to lift the stay is denied as moot.

2 **A. Law of the Case Doctrine**

3 “A Rule 12(c) motion for judgment on the pleadings that raises issues already
4 decided on a prior Rule 12(b)(6) motion to dismiss is subject to the ‘law of the case’
5 doctrine.” See Marble Voip Partners LLC v. Zoom Video Commc’ns, Inc., 2024 WL
6 86859, at 5–6 (N.D. Cal. Jan. 8, 2024) (citing Strigliabotti v. Franklin Res., Inc., 398 F.
7 Supp. 2d 1094, 1098 (N.D. Cal. 2005)). “Under the ‘law of the case’ doctrine, ‘a court is
8 generally precluded from reconsidering an issue that has already been decided by the same
9 court, or a higher court in the identical case.’” United States v. Alexander, 106 F.3d 874,
10 876 (9th Cir. 1997) (quoting Thomas v. Bible, 983 F.2d 152, 154 (9th Cir. 1993)).

11 Musk tries to frame the arguments in his motion as brand new. Reply (dkt. 68) at 3.
12 But this Court considered and explicitly decided the main issue that Musk now raises about
13 “countervailing statements” in the Merger Agreement. The following is an excerpt from
14 the motion to dismiss hearing:

15 **MR. BERNSTEIN:** Your Honor, if I may respond to the false
16 premise notion, once again, the merger agreement is culpable. If the
17 marketplace interprets the information rights provisions in the manner that
18 I understand people on this call do, then the market would know Mr. Musk
19 doesn’t have the right to terminate just because he is not getting
20 the information. The merger agreement is public.

21 ...

22 **THE COURT:** Your point I think is: Wait a minute, Musk is there
23 saying “I want documents from Twitter” and anybody who reads [the]
24 merger agreement knows [he] can’t get documents from Twitter,
25 legally can’t compel it. And, therefore, they would know that what he says
26 “I want documents from Twitter,” that may be an expression of a hope but
27 it’s not a legally enforceable term.

28 ...

29 **MR. BERNSTEIN:** Your Honor, that’s correct.

30 MTD Tr. (dkt. 46) at 46:9–47:25.

1 That exchange is identical to what Musk now argues—that is, investors knew he
2 was not entitled to the bot data because the Merger Agreement was publicly available, and
3 so his statements were not materially misleading. Indeed, Musk admitted at the hearing on
4 this motion that his argument “was presented” during the motion to dismiss hearing. Tr.
5 (dkt. 86) at 8:3–9:3. And the Court addressed the argument directly in its motion to
6 dismiss order:

7 At the motion hearing, Defendant argued that because the Merger
8 Agreement was publicly filed with the SEC, Defendant’s tweets could not
9 have been misleading as to Twitter’s obligation under the Merger
10 Agreement. However, Defendant does not point to a specific disclosure in
11 the Merger Agreement that would prevent a reasonable investor from being
12 misled by Defendant’s tweet—i.e., a countervailing statement that the deal
13 will close even if Twitter fails to provide him with the bot data he requests.
14 See, e.g. In re eHealth, Inc. Sec. Litig., No. 20-CV02395-JST, 2023 WL
15 6390593, at *5 (N.D. Cal. Sept. 28, 2023) (finding that although the
16 defendants referenced SEC filings on the calls in which the alleged
17 misstatements were made, nothing in the filings directly addressed the
18 specific issue about which reasonable investors would be misled).

19 See Order at 20 n.8.

20 Musk argues that this doctrine is not a bar to his motion because this issue was not
21 briefed in his motion to dismiss. Reply (dkt. 68) at 3. But full briefing is not the
22 requirement. The law of the case doctrine acts as a bar “when the issue in question was
23 actually considered and decided by the first court.” See Brown v. Alexander, 2016 WL
24 829071, *7 (N.D. Cal. Mar. 3, 2016) (quoting U.S. v. Cote, 51 F.3d 178, 181 (9th Cir.
25 1995)) (emphasis added). After hearing argument, the Court considered the issue and
26 decided it against Musk. See Order at 20 n.8. At that time, the Court was fully aware of
27 the provisions of the Merger Agreement that Musk now points to, and the Court
28 determined that those provisions were not sufficient countervailing statements. See id.
Additionally, the Court thoroughly considered whether Plaintiffs plausibly alleged loss
causation for Musk’s material misstatements and decided they did so. Id. at 35–37.

29 A court may exercise its discretion to reconsider an issue in certain circumstances—
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1 such as when the first decision was clearly erroneous or an intervening change in the law
2 has occurred—but Musk does not contend that these circumstances exist. See Alexander,
3 106 F.3d at 876; see also Tr. 5:7–6:7. Accordingly, the Court DENIES Musk’s motion
4 based on the law of the case doctrine.

5 **B. Motion to Lift Stay**

6 When Musk filed his motion for judgment on the pleadings, the PSLRA discovery
7 stay was reinstated. Plaintiffs move to lift that discovery stay. See Mot. to Lift Stay.
8 Because the Court denies the motion for judgment on the pleadings, the stay is lifted and
9 discovery can go forward. See Tr. (dkt. 86) (“The Court: And if I deny the motion for
10 judgment on the pleadings, discovery can go forward. So, you know, I don’t need to
11 address that right now. I just need to address the motion for judgment on the pleadings. . . .
12 MR. CHANG: Absolutely, Your Honor.”). Accordingly, the Court DENIES this motion
13 as moot.

14 **IV. CONCLUSION**

15 For the foregoing reasons, the Court DENIES Musk’s motion for judgment on the
16 pleadings. In turn, the PSLRA stay is lifted. The Court therefore DENIES Plaintiffs’
17 motion to lift the stay as moot.

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19 **IT IS SO ORDERED.**

20 Dated: August 5, 2024



CHARLES R. BREYER
United States District Judge

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